

ARTICLE VIII. SEXUALLY ORIENTED BUSINESS EMPLOYEES, CONDUCT AND OPERATIONS*

DIVISION 1. GENERALLY

Sec. 28-251. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Conduct any business in an enterprise. Any person who does any one or more of the following shall be deemed to be conducting business in an enterprise:

- (1) Operates a cash register, cash drawer or other depository on the premises of the enterprise where cash funds or records of credit card or other credit transactions generated in any manner by the operation of the enterprise or the activities of the premises of the enterprise;
- (2) Displays or takes orders from any customer for any merchandise, goods, entertainment or other services offered on the premises of the enterprise;
- (3) Delivers or provides to any customer any merchandise, goods, entertainment or other services offered on the premises of the enterprise;

*Sections 4 and 5 of this Ordinance shall become effective on the 120th day next following the date of its passage and approval by the Mayor. In order to afford any person who requires a permit under Article VIII of Chapter 28 of the Code of Ordinances, Houston, Texas, an opportunity to apply for a permit and, if the permit application is denied by the director and the hearing officer, initiate judicial review prior to the effective date, the Police Chief or his designees shall commence accepting and processing applications for permits on the ninetieth day prior to the effective date. Permit applications shall be processed and hearings shall be conducted within the times specified in Section 28-254 of the Code of Ordinances, as adopted in Section 4 of this Ordinance, so as to ensure that applicants who promptly apply for permits and, if denied, request hearings, will have a period of at least thirty days in which to seek judicial review or injunctive relief before the effective date. Permits issued prior to the effective date shall be postdated to the effective date.

- (4) Acts as a door attendant to regulate entry of customers or other persons into the premises of the enterprise; or
- (5) Supervises or manages other persons in the performance of any of the foregoing activities on the premises of the enterprise.

Customer. Any person who:

- (1) Is allowed to enter an enterprise or any portion of an enterprise in return for the payment of an admission fee, membership fee or any other form of consideration or gratuity;
- (2) Enters an enterprise or any portion of an enterprise and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or
- (3) Is a member of and on the premises of an enterprise operating as a private or membership club or an enterprise that reserves any portion of the premises of the enterprise as a private or membership club.

Director. The chief of police and such employee(s) of the police department as he may designate to perform the duties of the director under this article.

Employee. Any person who renders any service whatsoever to the customers of an enterprise, works in or about an enterprise or who conducts any business in an enterprise and who receives or has the expectation of receiving any compensation from the operator, or customers of the enterprise. By way of example, rather than limitation, the term includes the operator and other management personnel, clerks, dancers, models and other entertainers, food and beverage preparation and service personnel, door persons, bouncers, and cashiers. It is expressly intended that this definition cover not only conventional employer-employee relationships but also independent contractor relationships, agency relationships, and any other scheme or system whereby the 'employee' has an expectation of receiving compensation, tips, or other benefits from the enterprise or its customers in exchange for services performed.

Enterprise. An adult bookstore, adult cabaret, adult encounter parlor, adult lounge, adult modeling studio, adult movie theater or any establishment whose primary business is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to its customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. The term "enterprise" shall include any premises for which a permit is required under either or both of articles II and III of this chapter. However, the term 'enterprise' shall not be construed to include:

- (1) Any business operated by or employing licensed psychologists, licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers performing functions authorized under the licenses held;
- (2) Any business operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts; or
- (3) Any retail establishment whose major business is the offering of wearing apparel for sale to customers.

Entertainer. Any employee of an enterprise who performs or engages in entertainment.

Entertainment. Any act or performance, such as a play, skit, reading, revue, fashion show, modeling performance, pantomime, role playing, encounter session, scene, song, dance, musical rendition or striptease that involves the display or exposure of specified sexual activities or specified anatomical areas. The term "entertainment" shall include any employee or entertainer exposing any specified anatomical areas or engaging in any specified sexual activities whatever in the presence of customers.

Manager. Any person who supervises, directs or manages any employee of an enterprise or any other person who conducts any business in an enterprise with respect to any activity conducted on the premises of the enterprise, including any "on-site manager."

On-site manager. A person charged by an owner or operator of an enterprise with the responsibility for direct supervision of the operation of the enterprise and with monitoring and observing all areas of the enterprise to which customers are admitted at all times during which the enterprise is open for business or customers are on the premises of the enterprise.

Operator. The manager or other natural person principally in charge of an enterprise.

Owner or owners. The proprietor if a sole proprietorship, all general partners if a partnership, or the corporation if a corporation.

Permit. A current, valid permit issued by the director pursuant to the terms of this article.

Separate area. Any portion of the interior of an enterprise separated from any other portion of an enterprise by any wall, partition or other divider.

Specified anatomical areas:

- (1) Less than completely and opaquely covered:
 - a. Human genitals, pubic region or pubic hair;
 - b. Buttock;
 - c. Female breast or breasts or any portion thereof that is situated below a point immediately above the top of the areola; or
 - d. Any combination of the foregoing; or
- (2) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

Specified sexual activities:

- (1) Human genitals in a discernible state of sexual stimulation or arousal;
 - (2) Acts of human masturbation, sexual intercourse or sodomy;
 - (3) Fondling or other erotic touching of human genitals, pubic region or pubic hair, buttock or female breast or breasts; or
 - (4) Any combination of the foregoing.
- (Ord. No. 97-75, § 4, 1-15-97)

Sec. 28-252. Cumulative.

The provisions of this article are expressly made cumulative of other applicable laws including, without limitation, articles II and III of this chapter.

(Ord. No. 97-75, § 4, 1-15-97)

DIVISION 2. PERMITS**Sec. 28-253. Permit required.**

(a) It shall be unlawful for any person who does not hold a permit to act as an entertainer or a manager of or in an enterprise.

(b) It shall be the duty of the operator and owners of each enterprise to ensure that no person acts as an entertainer or manager of or in the enterprise unless that person holds a permit.

(Ord. No. 97-75, § 4, 1-15-97)

Sec. 28-254. Issuance of permits.

(a) Any person who desires to obtain an original or renewal permit shall make application to the director in person at the offices of the vice division of the police department between the hours of 8:00 a.m. and 12:00 p.m., Monday, Wednesday or Friday, city observed holidays excepted. The application shall be made under oath upon a form prescribed by the director and shall include:

- (1) The name, home street address and mailing address (if different) of the applicant;
- (2) Proof of the date of birth of the applicant and the identity of the applicant, including at least one photographic identity card issued by a governmental agency;
- (3) A list of any criminal charges pending, convictions, and time of service in jail or prison as related to any applicable offense that is specified in section 1-10 of this Code; and
- (4) Two passport-type photographs of the applicant of a size specified by the director, which shall become part of the photographic identity cards if a permit is issued.

(b) Each application shall be accompanied by a nonrefundable processing fee of \$60.00. Each applicant shall be required to provide fingerprints to be used to verify the applicant's identity and criminal history information. Each applicant shall sign a waiver and authorization form authorizing the director to request on behalf of the applicant criminal history reports from the Texas Department of Public Safety and any appropriate federal agency.

(c) The director shall issue the permit within ten days from the date of filing of the application unless he finds that the applicant has been convicted of or spent time in jail or prison for an offense specified in the applicable provisions of section 1-10 of this Code within the time specified therein. If the application is not granted, then the applicant shall be mailed notice of the grounds and of their right to provide evidence and request a hearing as provided by section 1-9(a) of this Code, within ten days from the date of filing of the application.

(d) Each permit issued by the director shall consist of two photographic identification cards, a personal card and an on-site card.

(e) Any applicant whose application is denied and who requests a hearing on the denial shall be granted a hearing within ten days following the receipt of the request by the vice division of the police department. The hearing shall be conducted as provided in section 1-9(c) of the Code. If the hearing officer rules against the applicant, then the applicant shall be given notice of the right to seek an injunction or judicial review of the decision as provided in section 1-9 of the Code and applicable laws, including article 6252-13d of the Texas Revised Civil Statutes.

(f) In the event that the director fails to issue or deny a permit application within the time specified in subsection (c) or to provide a hearing within the time specified in subsection (e), then the applicant shall, upon written request, be immediately issued a temporary permit which shall be valid until the third day after the applicant is given notice of the decision of the director or the hearing officer.

(g) If any personal card or on-site card is lost or stolen, the holder thereof shall immediately notify the vice division and request a replacement, which shall be issued for a fee of \$35.00 within three days following verification of the identity of the holder.

(h) No permit application shall be accepted nor shall a permit be issued to any person who does not provide proof that he is at least 18 years old. Any permit issued by virtue of any misrepresentation or error to any person under age 18 shall be void.

(Ord. No. 97-75, § 4, 1-15-97; Ord. No. 02-528, §§ 12b., c., 6-19-02)

Sec. 28-255. Term, transfer, amendment.

(a) A permit is valid for two years from the date of its issuance.

(b) A permit is personal to the named permit holder and is not valid for use by any other person.

(c) Each permit holder shall notify the vice division of the police department of his new address within ten days following any change of his address.

(Ord. No. 97-75, § 4, 1-15-97)

Sec. 28-256. Display.

(a) Each manager or entertainer shall conspicuously display his personal card upon his person at all times while acting as an entertainer or manager of or in an enterprise.

(b) Each manager or entertainer shall provide his on-site card to the manager or on-site manager in charge of the enterprise to hold while the manager or entertainer is on the premises.

(c) In any prosecution under section 28-253 of this Code, it shall be presumed that the actor did not have a permit unless the permit was in display as required under section (a) of this subsection.

(Ord. No. 97-75, § 4, 1-15-97)

Sec. 28-257. Revocation.

In the event that the director has reasonable grounds to believe that any permit holder has

been convicted of or spent time in jail or prison for an offense as specified in the applicable provision of section 1-10 of this Code within the time specified therein, then the director may revoke the permit following a notice of the grounds and a hearing as provided in section 1-9(b) of this Code. In the event that the hearing officer determines that the permit should be revoked, then he shall issue his final decree to be effective in 30 days following the mailing of notice of the decree to the permit holder in order to allow the permit holder an opportunity before the permit must be surrendered to seek an injunction or judicial review of the decision as authorized in section 1-9 of this Code and applicable laws, including article 6252-13d of the Texas Revised Civil Statutes.

(Ord. No. 97-75, § 4, 1-15-97)

DIVISION 3. CONDUCT OF ENTERTAINERS

Sec. 28-258. Conduct of employees.

(a) It shall be unlawful for any entertainer to touch a customer or the clothing of a customer while engaging in entertainment or while exposing any specified anatomical areas or engaging in any specified sexual activities.

(b) It shall be unlawful for any entertainer to approach closer than three feet to any customer while engaging in entertainment or while exposing any specified anatomical areas or engaging in any specified sexual activities.

(c) It shall be unlawful for any employee to engage in entertainment or to expose any specified anatomical areas or engage in any specified sexual activities in the presence of a customer in any separate area within an enterprise to which entry or access is blocked or obscured by any door, curtain or other barrier separating entry to such area from any other area of the enterprise.

(Ord. No. 97-75, § 4, 1-15-97)

DIVISION 4. PENALTIES

Sec. 28-259. Penalties.

(a) The violation of any provision of this article, including the doing of anything which is herein prohibited or declared to be unlawful or

the failure to do anything or perform any duty which is required herein, shall be punishable as provided by Section 243.010(b) of the Local Government Code. Each day that any violation shall continue shall constitute and be punishable as provided by Section 243.010(b) of the Local Government Code. Each day that any violation shall continue shall constitute and be punishable as a separate offense.

(b) The revocation or suspension of any permit shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a permit.

(Ord. No. 97-75, § 4, 1-15-97)